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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 ASIL LEON HUBLEY,

8 Plaintiff,

9 v.

10 CAROLYN W. COLVIN,  
Commissioner of Social Security,

11 Defendant.  
12

NO. 2:13-CV-0193-JLQ

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

13  
14 Plaintiff appeals from the final decision of the Commissioner of the Social  
15 Security Administration ("Commissioner") which denied his application for  
16 Supplemental Security Income (SSI) benefits after a hearing before an Administrative  
17 Law Judge ("ALJ"). This case, filed on May 24, 2013, was reassigned to the  
18 undersigned on February 6, 2014. (ECF No. 18).

19 Before the court are Cross-Motions for Summary Judgment. (ECF Nos. 15, 16).  
20 Plaintiff is represented by attorney Lora Lee Stover. Defendant is represented by  
21 Assistant United States Attorney Pamela DeRusha and Special Assistant United States  
22 Attorney Thomas Elsberry. Jurisdiction to review the Commissioner's decision exists  
23 pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3).

24 **I. PROCEDURAL HISTORY**

25 Plaintiff has been pursuing Supplemental Security Income (SSI) benefits for the  
26 past six years. His two previous applications were denied. Plaintiff did not appeal the  
27 determination denying his first application filed on July 10, 2008. On April 7, 2009,  
28 he filed a second application for SSI benefits alleging disability due to a broken right

1 hand, deformed right hip, right knee, and right pelvis. This second application was  
2 denied on July 29, 2010 after hearing by administrative law judge (ALJ) R. J. Payne.  
3 ALJ Payne determined the Plaintiff had the capacity to perform sedentary work with  
4 limitations despite the following severe impairments: a history of fracture injuries to  
5 the right hand, Blount's disease, a right knee torn lateral meniscus status post repair,  
6 obesity, and diminished internal rotation of the right hip. Through Ms. Stover, his  
7 present attorney, Plaintiff sought review of that decision in this court. E.D.WA Cause  
8 No. CV-11-0299-CI. In an opinion by Magistrate Judge Cynthia Imbrogno, hearing  
9 the matter by consent of the parties, the Commissioner's decision was affirmed. *See*  
10 *Hubley v. Colvin*, 2013 WL 1703365 (E.D.Wash., April 18, 2013).

11 On September 15, 2010, less than two months after ALJ Payne's decision  
12 denying his second application, Plaintiff filed a new application for SSI benefits  
13 alleging disability beginning December 31, 2001 (later amended to July 30, 2010). (Tr.  
14 169-179). Plaintiff's application was denied initially and on reconsideration. He  
15 requested a hearing before an ALJ. On March 12, 2013 an administrative hearing was  
16 held before ALJ Marie Palachuk. Testifying at the hearing were Richard A. Hutson,  
17 M.D. , a medical expert and orthopedic surgeon; Scott Whitmer, a vocational expert;  
18 and Plaintiff. On March 28, 2012 the ALJ issued an order finding Plaintiff not disabled  
19 since September 15, 2010, the date of his current application. (Tr. 36). Plaintiff  
20 requested review of the ALJ's decision. (Tr. 19-20). The Appeals Council denied his  
21 request for review on March 27, 2013 (Tr. 1-7), making the ALJ's ruling the "final  
22 decision" of the Commissioner as the term is defined by 42 U.S.C. § 405(g). Plaintiff  
23 commenced this action on May 29, 2013 seeking judicial review of the Commissioner's  
24 final decision. (ECF No. 5).

## 25 **II. FACTUAL BACKGROUND**

26 The facts are contained in the medical records, administrative transcript (ECF  
27 No. 12)("Tr."), and the ALJ's decision, and are only briefly summarized here.  
28

1           **A.     Plaintiff's History**

2           Plaintiff was born in 1981 and was 30 years old at the time of the ALJ's hearing.  
3           He testified he is married and has nine children who reside in the household. (Tr.  
4           203). Plaintiff completed the tenth grade, but dropped out during 11<sup>th</sup> grade to look  
5           for work to support his family. (Tr. 73). He has attended classes to complete his  
6           GED, but has yet to complete it. He is left handed.

7           Plaintiff has a limited work history with jobs of short duration including a fast  
8           food worker and construction worker. He has earned over \$1,000/year in just two  
9           jobs: a laundry laborer at Superior Linen in 2000 and a book sorter at a library in 2001.  
10          At Superior Linen he lifted carpets onto and operated a "carpet roller machine." (Tr.  
11          74). He was injured on the job when his right hand was trapped in the machine. *Id.*  
12          In 2001, he left the book sorting position through the Tacoma-Pierce County  
13          Employment and Training Consortium to move to Spokane. (Tr. 76). Plaintiff has not  
14          worked steadily since moving to Spokane.

15          Plaintiff claims his ability to work is limited by worsening pain secondary to his  
16          impairments impacting his feet, calves, knees, pelvis, hips, low back, and his  
17          non-dominant, right hand.

18           **B.     Medical Evidence**

19          The medical record includes treatment notes and records reviewed previously  
20          pursuant to Plaintiff's prior disability applications. Plaintiff's medical history is  
21          thoroughly discussed in ALJ Payne's 2010 decision and ALJ Palachuk's decision in  
22          this case. ALJ Payne's decision discusses that Plaintiff was diagnosed with Blount's  
23          Disease, an unusual bone disorder which causes the lower leg to turn inward  
24          ("intoeing"), at age 3 or 4 at Madigan Army Medical Center (Tr. 204). Plaintiff wears  
25          valgus unloading knee braces. (Tr. 419). Dr. Hutson testified at the administrative  
26          hearing that at 5 feet 9 inches in height and approximately 240 pounds, Plaintiff is  
27          considered obese. (Tr. 58).

28          Plaintiff was seen for his general health care needs at Group Health and

1 Spokane Falls Family Clinic. In 2009 and again in 2011, Plaintiff underwent surgery  
2 on his right knee. (Tr. 254; 514-515, Operative Report of Miguel Schmitz, M.D.).  
3 The record also includes clinical records from Spokane Occupational & Hand  
4 Therapy, Summit Rehabilitation Associates, Northwest Orthopaedic Specialist,  
5 Schindler's Orthotic and Prosthetic Services, Providence Orthopedic Specialties, Star  
6 Physical Therapy and Rehabilitation, Alpine Orthopedic and Spine, and Houk  
7 Chiropractic Clinic. Plaintiff sought emergency room treatment at Deaconess Medical  
8 Center on 12/16/09 (pain), 1/8/2010 (pain), and 5/10/2011 (bleeding post knee  
9 surgery).

10 A consultative psychological evaluation was conducted on December 7, 2010  
11 by Joyce Everhart, Ph.D. (Tr. 284-289). A consultative physical examination was  
12 performed by A. Peter Weir, M.D. on December 16, 2010 (Tr. 291-296).

13 The record also contains the reviews of non-examining state agency medical  
14 professionals, Jerry Gardner, Ph.D. (January 7, 2011, Tr. 305-317), Patricia Kraft,  
15 Ph.D. (March 8, 2011, Tr. 345), and Alfred Scottolini, M.D. (Tr. 346).

### 16 **C. Commissioner's Findings**

17 The ALJ found at Step 1 that Plaintiff had not engaged in substantial gainful  
18 activity since September 15, 2010, the date of Plaintiff's most recent SSI application.  
19 (Tr. 27).

20 At Step 2, the ALJ determined that Plaintiff had the following severe  
21 impairments: juvenile osteochondrosis (Blount's disease), obesity, and  
22 Legg-Calvé-Perthes Disease (20 CFR 416.920(c)). She found Plaintiff's diagnosed  
23 "Pain Condition Associated with Both Psychological Factors and General Medical  
24 Conditions," as well as depression and hand impairments, were non-severe. (Tr. 28-  
25 39).

26 At Step 3, considering the effects of obesity, the ALJ determined that the  
27 Plaintiff's impairments, alone or in combination, did not meet or medically equal one  
28 of the listed impairments in 20 CFR Pt. 404 Subpt. P App 1 (Listings).

1 At Step 4, the ALJ determined the Plaintiff had the residual functional capacity  
2 (“RFC”) to perform light work as defined in 20 CFR 416.967(b) with certain  
3 exertional and non-exertional limitations.

4 The claimant can occasionally perform postural movements, except he can  
5 never crawl, kneel, or climb ladders, ropes, or scaffolds. The claimant should  
6 avoid concentrated exposure to extreme temperatures, wetness, humidity,  
7 vibration, and all exposure to hazards. (Tr. 30). In her Step 4 findings, the ALJ devoted a lengthy discussion to the medical  
8 evidence and Plaintiff’s testimony, and concluded that Plaintiff’s physical limitations  
9 “were not as significant as alleged.” (Tr. 35). The ALJ also considered the fact that  
10 Plaintiff is a “younger individual” as defined by 20 C.F.R. 416.963 and has a limited  
11 education. (Tr. 35). Based upon this determination of Plaintiff’s RFC, the ALJ  
12 concluded Plaintiff could not perform his past relevant work. (Tr. 35).

13 At Step 5, the ALJ found transferability of job skills not an issue because  
14 Plaintiff’s past relevant work was unskilled. (Tr. 35). Relying upon the testimony of  
15 vocational expert, Scott Whitmer, the ALJ concluded that there are jobs that exist in  
16 significant numbers in the national economy that the claimant can perform, including  
17 weight tester (SVP 2, sedentary), mail clerk (SVP 2, light), and bottling line attendant  
18 (SVP 1, light). (Tr. 36). Accordingly, the ALJ concluded that Plaintiff was not  
19 disabled, as defined by the Social Security Act, from September 15, 2010 to March 28,  
20 2012.

### 21 **III. LEGAL STANDARDS**

#### 22 **A. Sequential Evaluation**

23 The Social Security Act defines "disability" as the "inability to engage in any  
24 substantial gainful activity by reason of a medically determinable physical or mental  
25 impairment which can be expected to result in death or which has lasted or can be  
26 expected to last for a continuous period of not less than twelve months." 42 U.S.C.  
27 §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant shall be  
28 determined to be under a disability only if the impairments are of such severity that  
the claimant is not only unable to do his previous work but cannot, considering

1 claimant's age, education and work experiences, engage in any other substantial  
2 gainful work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
3 1382c(a)(3)(B).

4 The Commissioner has established a five-step sequential evaluation process for  
5 determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920; *Bowen*  
6 *v. Yuckert*, 482 U.S. 137, 140-42 (1987):

7 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R. §§  
8 404.1520(b), 416.920(b). If he is, benefits are denied. If he is not, the decision maker  
9 proceeds to Step 2.

10 Step 2: Does the claimant have a medically severe impairment or combination  
11 of impairments? 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does not have  
12 a severe impairment or combination of impairments, the disability claim is denied. If  
13 the impairment is severe, the evaluation proceeds to the third step.

14 Step 3: Does the claimant's impairment meet or equal one of the listed  
15 impairments acknowledged by the Commissioner to be so severe as to preclude  
16 substantial gainful activity? 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 C.F.R. Pt. 404  
17 Subpt. P App. 1. If the impairment meets or equals one of the listed impairments, the  
18 claimant is conclusively presumed to be disabled. If the impairment is not one  
19 conclusively presumed to be disabling, the evaluation proceeds to Step 4.

20 Step 4: Does the impairment prevent the claimant from performing work he has  
21 performed in the past? 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant is able  
22 to perform his previous work, he is not disabled. If the claimant cannot perform this  
23 work, the inquiry proceeds to the Fifth and final Step.

24 Step 5: Is the claimant able to perform other work in the national economy in  
25 view of his age, education and work experience? 20 C.F.R. §§ 404.1520(f),  
26 416.920(f).

27 The initial burden of proof rests upon the Plaintiff to establish a prima facie  
28 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th

1 Cir. 1971). The initial burden is met once a claimant establishes that a physical or  
2 mental impairment prevents him from engaging in his previous occupation. The  
3 burden then shifts to the Commissioner to show (1) that the claimant can perform  
4 other substantial gainful activity and (2) that a "significant number of jobs exist in the  
5 national economy" which claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498  
6 (9th Cir. 1984).

7 **B. Standard of Review**

8 This court's role on review of the decision of the ALJ is limited. The court  
9 reviews that decision to determine if it was supported by substantial evidence and  
10 contains a correct application of the law. *Valentine v. Comm'r. Soc. Sec. Admin*, 574  
11 F. 3d 685,690 (9<sup>th</sup> Cir. 2009). This court is obligated to affirm the ALJ's findings if  
12 they are supported by substantial evidence and the reasonable inferences to be drawn  
13 therefrom. *Molina v. Astrue*, 674 F. 3d 1104, 1110-11 (9<sup>th</sup> Cir. 2012). Substantial  
14 evidence is such relevant evidence that a reasonable mind might accept as adequate  
15 to support the conclusion.

16 "The [Commissioner's] determination that a claimant is not disabled will be  
17 upheld if the findings of fact are supported by substantial evidence and the  
18 [Commissioner] applied the proper legal standards." *Delgado v. Heckler*, 722 F.2d  
19 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more  
20 than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir.  
21 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602  
22 (9th Cir. 1989). "It means such relevant evidence as a reasonable mind might accept  
23 as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401  
24 (1971) (citations omitted). "[S]uch inferences and conclusions as the [Commissioner]  
25 may reasonably draw from the evidence" will also be upheld. *Mark v. Celebrezze*, 348  
26 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a whole,  
27 not just the evidence supporting the decision of the Commissioner. *Weetman v.*  
28 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). This court may set aside a denial of



benefits only if the basis for denial is not supported by substantial evidence or if it is based on legal error. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). It is the role of the trier of fact, the ALJ, not this court, to resolve conflicts in the evidence. *Richardson*, 402 U.S. at 400. If the evidence supports more than one rational interpretation, the court must uphold the decision of the ALJ. *Thomas*, 278 F.3d at 954 (9th Cir. 2002).

#### IV. ISSUES

Plaintiff contends the ALJ's decision was not supported by substantial evidence and identifies three specific issues for review:

1. Whether the ALJ erred at Step 2 finding non-severe Plaintiff's medically determinable impairment of status post fracture of the right non-dominant hand;
2. Whether the ALJ erred in assessing Plaintiff's credibility and "disregarded" Plaintiff's pain complaints; and
3. Whether the ALJ erred at Step 4 in determining Plaintiff's RFC. (ECF No. 15 at 9).

Plaintiff asks the court to reverse the ALJ and remand for the award of benefits, or alternatively, to remand for further consideration. The Commissioner contends the ALJ's decision is supported by substantial evidence.

#### V. DISCUSSION

##### A. Step 2

The record reflects Plaintiff has a remote history of non-dominant, right hand fractures, one associated with an on the job injury in 2000 or 2001. The medical record evidences Plaintiff has a mild deformity associated with his hand condition, status post fractures of the third, fourth and fifth metacarpals, right hand. Plaintiff asserts the ALJ erred at Step 2 in determining Plaintiff's hand impairments were non-severe.

At Step 2, a claimant must make a threshold showing that his medically determinable impairments significantly limit his ability to perform basic work



1 activities. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§  
2 404.1520(c), 416.920(c). “Basic work activities” refers to “the abilities and aptitudes  
3 necessary to do most jobs.” 20 C.F.R. §§ 404.1521(b), 416.921(b). “An impairment  
4 or combination of impairments can be found ‘not severe’ only if the evidence  
5 establishes a slight abnormality that has ‘no more than a minimal effect on an  
6 individual's ability to work.’ ” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.1996)  
7 (quoting Social Security Ruling (SSR) 85–28). “[T]he step two inquiry is a de minimis  
8 screening device to dispose of groundless claims.” *Id.* (citing *Bowen v. Yuckert*, 482  
9 U.S. 137, 153–54(1987)).

10 The fact that a medically determinable condition exists does not automatically  
11 mean the symptoms are "severe," or "disabling" as defined by the Social Security  
12 regulations. *See, e.g., Edlund*, 253 F.3d at 1159–60; *Fair v. Bowen*, 885 F.2d 597,  
13 602–03 (9th Cir.1989); *Key v. Heckler*, 754 F.2d 1545, 1549–50 (9th Cir. 1985). To  
14 establish the existence of a medically determinable impairment, the claimant must  
15 provide medical evidence consisting of “signs—the results of ‘medically acceptable  
16 clinical diagnostic techniques,’ such as tests—as well as symptoms,” a claimant's own  
17 perception or description of his physical or mental impairment. *Ukolov v. Barnhart*,  
18 420 F.3d 1002, 1005 (9th Cir. 2005). A claimant's own statement of symptoms alone  
19 is not enough to establish a medically determinable impairment. *See* 20 C.F.R. §§  
20 404.1508, 416.908. In addition, the impairment must last, or be expected to last, for  
21 a continuous period of at least 12 months. 20 C.F.R. §§ 404.1509, 416.909 (durational  
22 requirement).

23 The court notes ALJ Palachuk's Step 2 analysis differed from ALJ Payne's 2010  
24 decision as ALJ Payne included a finding of "history of fracture injuries to right hand"  
25 in the list of severe impairments. (Tr. 191). However, ALJ Palachuk was not  
26 required to adopt this finding where there was new and material evidence relating to  
27 Plaintiff's hand impairment and this sequential step. SSR 97-4(9), 1997 WL 742759,  
28 at \*1-3 (Dec. 3, 1997). The ALJ's decision explicitly addressed this evidence. The

1 ALJ's decision notes the fact that Plaintiff sought treatment at Spokane Occupational  
2 & Hand Therapy in February 2009 "several years" after his injury requesting a splint  
3 for his hand, reporting that he "mostly wanted to wear the splint on an as needed basis  
4 when he was experiencing pain." (Tr. 28, Tr. 327). The clinic note from the visit  
5 reflected that he was able to make a full fist. (Tr. 327). Plaintiff was provided a splint  
6 and as the ALJ states, "no additional occupational therapy was ordered." Several  
7 months later, the office declined Plaintiff's request to provide a statement of "what he  
8 can and cannot do." (Tr. 325). In his consultative evaluation on December 16, 2010,  
9 Dr. Weir noted a *mild* deformity of the right third, fourth, and fifth metacarpals post  
10 fractures, but rated Plaintiff's grip strength as 5/5. He concluded that no functional  
11 limitations resulted therefrom. Finally, the ALJ accorded significant weight to the  
12 testimony of the testifying medical expert, Dr. Hutson, who did not find support in the  
13 record of claimed vocational limitations associated with Plaintiff's use of his hands.  
14 *Id.* The ALJ ultimately concluded that treatment notes "do not support *ongoing*  
15 complaints of hand problems" or a hand impairment "which results in significant  
16 vocational limitations." (Tr. 28).

17 Plaintiff disputes these findings on two grounds, arguing the evidence  
18 demonstrates Plaintiff's hand impairment is more than a slight abnormality. Plaintiff  
19 directs the court to 1) the use of a "prescribed" splint and 2) evidence of decreased  
20 right hand grip strength contained in the 6/8/2010 Summit Rehabilitation physical  
21 therapy record for back, hip and knee pain. (Tr 388) (noting 35 pound right hand grip  
22 and 120 pound left hand).

23 The ALJ's nonseverity findings are supported by substantial evidence. The  
24 record affirmatively demonstrates Plaintiff has a remote history of right hand fracture  
25 injuries. Plaintiff's alleged intermittent pain, treated with the use of a splint on an as  
26 needed basis, does not evidence that the condition affects his ability to perform basic  
27 work activities. *See Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th  
28 Cir. 2006) (holding that an impairment that can be controlled effectively is not

1 disabling for social security purposes). The record also reflects Plaintiff returned to  
2 work at Superior Linen and continued employment after his injury to his hand. The  
3 unexplained Summit Rehabilitation notation regarding grip from a single day in 2010,  
4 is insufficient to support a finding of severe hand impairments. Even if the ALJ erred  
5 in not finding Plaintiff's hand impairment severe, the error is harmless because none  
6 of the treating, examining, or reviewing providers assessed any functional limitations  
7 associated with the impairment. As the ALJ also concluded, the record does not  
8 support the conclusion that Plaintiff is an individual "not capable of using [his] non-  
9 dominant hand on a frequent basis," (Tr. 88) as in Plaintiff's counsel's question posed  
10 to the vocational expert at the administrative hearing. (Tr. 35).

### 11 **B. Credibility**

12 Questions of credibility and resolutions of conflicts in the testimony are  
13 functions solely of the Commissioner, not this court. *Greger v. Barnhart*, 464 F.3d  
14 968, 972 (9th Cir. 2006). If the ALJ's interpretation of the claimant's testimony is  
15 reasonable and is supported by substantial evidence, it is not the court's role to  
16 "secondguess" it. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

17 An ALJ is not required to believe every allegation of disabling pain or other  
18 non-exertional impairment. *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007) (*citing*  
19 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). If the record establishes the  
20 existence of a medically determinable impairment that could reasonably give rise to  
21 symptoms assertedly suffered by a claimant, an ALJ must make a finding as to the  
22 credibility of the claimant's statements about the symptoms and their functional effect.  
23 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir.2006)(citations omitted).  
24 Where the record includes objective medical evidence that the claimant suffers from  
25 an impairment that could reasonably produce the symptoms of which the claimant  
26 complains, an adverse credibility finding must be based on clear and convincing  
27 reasons. *Carmickle v. Commissioner, Social Security Administration*, 533 F.3d 1155,  
28 1160 (9th Cir.2008) (citations omitted). The only time this standard does not apply is

1 when there is affirmative evidence of malingering. *Id.* The ALJ's credibility findings  
2 “must be sufficiently specific to allow a reviewing court to conclude the ALJ rejected  
3 the claimant's testimony on permissible grounds and did not arbitrarily discredit the  
4 claimant's testimony.” *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir.2004).

5 Plaintiff contends the ALJ “improperly rejected [his] testimony,” “failed to give  
6 convincing rationale for discounting Plaintiff’s allegations” and committed “harmful  
7 error...in rejecting his pain complaints.” (ECF No. 15 at 14). Plaintiff claims the  
8 Plaintiff’s credibility is “bolstered” by the diagnosis made by Joyce Everhardt, Ph.D.  
9 of “Pain Condition Associated with Both Psychological Factors and General Medical  
10 Conditions.” ECF No. 15 at 14. This is the whole of Plaintiff’s argument on this  
11 issue. Plaintiff has not identified any specific error or challenged the grounds on  
12 which the ALJ discounted the claimed severity of Plaintiff’s symptoms, including  
13 pain. As noted by Defendant, claims that are unsupported by explanation or authority  
14 may be deemed waived. *Northwest Acceptance Corp. v. Lynnwood Equip., Inc.*, 841  
15 F.2d 918, 923–24 (9th Cir. 1996) ; *Independent Towers of Washington v. Washington*,  
16 350 F.3d 925, 929 (9th Cir. 2003)(holding that courts cannot manufacture arguments  
17 for parties and should not consider claims not fully argued).

18 A claimant's assertion of pain must be given serious consideration, as pain in  
19 and of itself can be disabling. Courts have cautioned, however, that severity in pain  
20 disorders varies widely, and the claimant's subjective complaints need not be accepted  
21 insofar as they clash with other evidence in the record. *See Dunahoo v. Apfel*, 241 F.3d  
22 1033, 1038 (8th Cir. 2001). Notably, Plaintiff has not challenged the ALJ’s evaluation  
23 of Dr. Everhardt’s opinion and Step 2 finding that Plaintiff had no severe mental  
24 impairment.

25 The ALJ’s 5-page evaluation of the evidence and credibility findings were  
26 sufficiently specific and based upon clear and convincing reasons. First, the ALJ  
27 found that Plaintiff’s disabling chronic pain complaints were not fully corroborated  
28 by the objective medical evidence. For example, the ALJ noted that Dr. Howlett was

1 unable to determine an exact cause of the Plaintiff's pain or discomfort, questioned the  
2 Plaintiff's use of assistive devices, and recommended conservative management. (Tr.  
3 32). The ALJ also noted that Dr. Weir observed Plaintiff ambulating in the parking  
4 lot both before and after his examination without limp and without obvious  
5 discomfort. (Tr. 33). Second, the ALJ considered the internal conflicts with the  
6 Plaintiff's own statements, conduct and testimony. The ALJ noted his "wide range of  
7 activities," which demonstrated Plaintiff was capable of maintaining a household,  
8 caring for nine children, walking his children to school two and half to three blocks  
9 away, occasionally driving, attending classes four days a week, and tending to  
10 homework. Finally, the ALJ observed the Plaintiff's limited work history raised a  
11 question as to whether the Plaintiff's unemployment "is actually due to medical  
12 impairments." (Tr. 35). All of the reasons discussed by the ALJ were valid reasons  
13 and convince the court Plaintiff's pain complaints were not arbitrarily discredited. (Tr.  
14 35).

### 15 **C. Residual Functional Capacity (RFC)**

16 Finally, in disputing the ALJ's credibility findings, Plaintiff argues the ALJ's  
17 RFC determination is erroneous claiming it does not take into consideration Plaintiff's  
18 "pain complaints, his limited education, and his hand impairments." (ECF No. 15 at  
19 14). As discussed above, the ALJ gave specific, legally sufficient reasons for  
20 concluding Plaintiff's hand impairment was non-severe, that it imposed no functional  
21 restrictions, and for discounting Plaintiff's allegations of disabling chronic pain.  
22 Plaintiff's argument that the ALJ failed to consider his limited education is without  
23 merit, as the ALJ made specific findings concerning Plaintiff's limited education,  
24 asked the vocational expert to consider an individual "within the limited educational  
25 regulatory category," and adopted the unskilled work identified by the vocational  
26 expert as within the Plaintiff's RFC. (Tr. 36, 85). Moreover, Plaintiff has failed to  
27 show that his mental abilities would prevent him from being able to perform the jobs  
28 identified by the ALJ.

1 Plaintiff also contends the RFC “would have been even more restrictive, if the  
2 limitations were based upon the opinions of Plaintiff’s orthopedic surgeon Migueal  
3 Schmitz [M.D.] - See Tr 509...” (ECF No. 15 at 15). On October 20, 2011, Dr.  
4 Schmitz completed a form regarding Plaintiff’s functional capacity and stated Plaintiff  
5 could seldom lift/carry twenty pounds, occasionally lift/carry ten pounds, frequently  
6 sit, seldom stand/walk, or bend/stoop, and never climb, twist, squat/kneel, crawl,  
7 operate foot controls, or vibratory tasks. The ALJ specifically considered Dr.  
8 Schmitz’s opinion and accorded it little weight, due to its inconsistency with the  
9 totality of the evidence in the record and noting it was completed “only about five  
10 months after his [knee] surgery, and “thus this opinion would not support limitations  
11 for a twelve-month duration.” (Tr. 34).

12 Plaintiff has not challenged the ALJ’s evaluation of Dr. Schmitz’s opinion or  
13 argued that the ALJ failed to apply the correct legal standards in weighing any of the  
14 medical evidence. Absent legal error or an obviously erroneous decision, the court  
15 will not remand the case simply in hopes that a new ALJ will view the same evidence  
16 in a different light. In determining Plaintiff’s RFC, the ALJ analyzed numerous  
17 medical opinions of the record to resolve conflicts. The ALJ's findings are supported  
18 by the record and constitute a rational interpretation of the evidence.

## 19 VI. CONCLUSION

### 20 IT IS SO ORDERED:

- 21 1. Plaintiff's Motion For Summary Judgment (**ECF No. 15**) is **DENIED**;
- 22 2. Defendant's Motion For Summary Judgment (**ECF No. 16**) is **GRANTED**.

23 The Clerk of Court is directed to file this Order, enter judgment dismissing the  
24 Complaint and the claims therein with prejudice, provide copies to counsel, and  
25 **CLOSE THE FILE.**

26 DATED this 20th day of March, 2014.

27 s/ Justin L. Quackenbush  
JUSTIN L. QUACKENBUSH  
28 SENIOR UNITED STATES DISTRICT JUDGE